

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL
P. O. BOX 20207
NASHVILLE, TENNESSEE 37202**

January 12, 2004

Opinion No. 04-006

Authority of Security Officers

QUESTIONS

1. If proper suspicion is present, does a State Certified Security Officer, whether he/she is armed or unarmed, have the right to stop a person for questioning on the property he/she is hired to protect?

2. Does a State Certified Security Officer, whether he/she is armed or unarmed, have the right to stop a person in a vehicle for trespassing or any other law violation that occurs in his/her view on the property the officer was hired to protect?

3. Does a State Certified Security Officer, whether he/she is armed or unarmed, have the right to detain a person for questioning on the property he/she is hired to protect if the person's actions have given the security officer sufficient reason to stop, detain, or question him?

OPINIONS

1. Yes, but only within the scope of the suspect's consent unless the security officer has placed the suspect under arrest.

2. Yes, but the security officer may not detain the suspect without consent. He or she must either arrest the suspect on supportable probable cause or expel the suspect from the private property.

3. No, a security officer lacks the authority to detain a suspect without consent unless the officer has arrested the suspect on supportable probable cause.

ANALYSIS

1. Questioning by licensed security officers

A security officer on private property may stop a suspect for questioning but the suspect may not be detained against his or her will. The Tennessee Code specifically authorizes security guards to prevent, observe and detect any unauthorized activity on private property including intrusions, unauthorized entries, larcenies, vandalism, abuses, fires, and trespasses. *See* Tenn. Code Ann. § 62-35-102(16) (2003). Security guards are also charged with enforcement of rules, regulations and local and state laws on private property. *See* Tenn. Code Ann. § 62-35-102(16)(C) (2003). Because security guards are explicitly authorized to prevent and detect any unlawful activity as well as enforce local and state laws, a security guard would have the authority to stop and question a suspicious individual on private property.

However, it does not follow that a security guard may detain a suspect for questioning without the suspect's consent as a police officer might do. A police officer may impose some limited restraint on a suspect's freedom of movement if the officer has reasonable suspicion of unlawful activity. *See Terry v. Ohio*, 392 U.S. 1, 20 (1968); *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992). But no authority permits security guards to conduct investigatory stops merely to question a suspect in this fashion. So a security guard may not force a suspect to remain subjected to questioning against his or her will. Any detention against the suspect's will would be unlawful. In a more specific provision, Tenn. Code Ann. § 40-7-116 permits the detention of individuals by merchants or their agents who have probable cause to believe a theft has occurred or is about to occur.

If, however, the security guard arrests the suspect, he or she would be authorized to detain the suspect past his or her consent since the security guard is authorized to enforce state and local law while on private property. *See* Tenn. Code Ann. § 62-35-102(16)(C) (2003). This encompasses the power of arrest entrusted to the security guard as a private citizen. *See* Tenn. Code Ann. § 40-7-101 (2003); *State v. Smith*, 695 S.W.2d 954, 959 (Tenn. 1985). This Office opined that the power of arrest afforded to security officers is identical to that afforded to citizens. *See* Op. Tenn. Att'y Gen. 03-018 (Feb. 19, 2003). Security guards are explicitly denied the powers accorded police officers, which would include the power of arrest under color of government. *See* Tenn. Code Ann. §§ 62-35-127, 128, 134(c)(5) (2003) (forbidding security guards from holding themselves out as governmental agents); *State v. Hutson*, 649 S.W.2d 6, 8 (Tenn. Crim. App. 1982) (security guards are private citizens, not police officers whose actions trigger constitutional protections). Under the authority imparted to citizens to effect an arrest, security guards may arrest using force if necessary. *See* Tenn. Code Ann. § 39-11-621 (2003) (permitting a private person, making an arrest authorized by law, to use "force reasonably necessary to accomplish the arrest of an individual who flees or resists the arrest").

2. Stop of a vehicle by a licensed security guard

Under the statutory powers imparted upon security guards to prevent or detect unlawful entries on private property, a security guard may stop a vehicle for trespass or any unauthorized activity. *See* Tenn. Code Ann. § 62-35-102(16) (2003). This authority extends to suspicious vehicles. In defining security guards, Tenn. Code Ann. § 62-35-102(16)(C) recognizes the right of a security guard to control, regulate and direct the flow or movements of the public, whether by vehicle or otherwise on private property. As the agent entrusted to protect the property, the security guard may then expel the suspect from the premises. The security officer may also effect an arrest as a private citizen. The Tennessee Supreme Court has observed that, in order to arrest, “[i]t is basic statutory law in this state that a private person may arrest another for an offense committed in the presence of the arresting individual, or for a felony not committed in his presence.” *See State v. Smith*, 695 S.W.2d 954, 959 (Tenn. 1985); *accord* Tenn. Code Ann. § 40-7-109(a) (2003). As stated above, there is no statutory authority which would allow a security guard to stop and detain a suspect, but not arrest him or her.

3. Detention by a licensed security guard

See questions 1 and 2. A licensed security guard does not possess the authority to detain a suspect for questioning unless the suspect has consented or is placed under arrest. That being said, in the discharge of his duties, a security officer is certainly authorized to approach a suspicious individual and ask probing questions. So long as the officer has not overborne the suspect’s will, the suspect is answering questions voluntarily. *See generally State v. Brown*, 836 S.W.2d 530, 547 (Tenn.1992). At any time, if the security guard has supportable probable cause, he or she may arrest the suspect and use force, to the degree necessary. *See* Tenn. Code Ann. § 39-11-621 (2003). For a more detailed discussion of the authority of security guards to arrest, search and interrogate suspects, please see Op. Tenn. Att’y Gen. 03-018 (Feb. 19, 2003).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

JOHN H. BLEDSOE
Assistant Attorney General

Requested by:

Honorable Donna Rowland
State Representative, 34th District
209 War Memorial Building
Nashville, TN 37243-0134